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OPAD 11-68

To: District Superintendents  
Regional Occupational Program Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Assistant Superintendents of Instruction  
Directors of Child Welfare and Attendance  
SELPA Directors  
Special Education Directors

From: Ronald D. Wenkart  
General Counsel

Re: Questions and Answers – Antiseizure Medication

As you are aware, Senate Bill 161 (Huff)<sup>1</sup> adds Education Code section 49414.7, effective January 1, 2012. SB 161 authorizes unlicensed school employees to administer Diastat and other antiseizure medication to students who suffer seizures at school. In the last month, our office has received a number of questions regarding SB 161.

### **1. What was the purpose and intent behind the passage of Senate Bill 161?**

Education Code section 49414.7(a), states that it is the intent of the Legislature that whenever possible, an emergency antiseizure medication should be administered by a school nurse or licensed vocational nurse that has been trained in its administration. However, Section 49414.7(b) states that in the absence of a credentialed school nurse or other licensed nurse on site at the school or charter school, a school district, county office of education, or charter school may elect to participate in a program to allow non-medical employees to volunteer to provide medical assistance to students with epilepsy suffering from seizures upon request by a parent or guardian.

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<sup>1</sup> Stats. 2011, ch. 560.

The Legislature also emphasized the rights of students to a free appropriate public education SB 161. The purpose of allowing volunteer employees to administer emergency antiseizure medication is to ensure the right of children to attend school in a safe and healthy environment. The safety and welfare of some pupils with epilepsy may be compromised without immediate access to an emergency antiseizure medication. Even with a nurse employed at the school, trained volunteer employees may be needed, for example, for events that occur when the school nurse is off campus. In order to meet that goal and ensure the safety of pupil with epilepsy, it is essential that licensed health care professionals train and supervise employees to administer emergency antiseizure medication. "The American Academy of Pediatrics and Epilepsy Foundation of America support training of school employees... and believe that an emergency antiseizure medication may be safely and effectively administered by trained school employees."<sup>2</sup>

**2. May a school district, county office of education, or charter school elect to participate in a program to allow nonmedical employees to volunteer to provide medical assistance to students with epilepsy?**

Yes. A school district, county office of education, or charter school may elect to participate in this program.

**3. What training must school districts provide to school employees who volunteer?**

The school district, county office of education, or charter school shall provide school employees who volunteer with emergency medical training that is consistent with the training guidelines established to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee with voluntary emergency medical training shall provide emergency medical assistance, in a manner consistent with the training guidelines in Section 49414.7(m)(3). A school employee who does not volunteer or who has not been trained shall not be required to provide emergency medical assistance.

**4. May parents request their child's school to have one or more of its employees trained in the administration of an emergency antiseizure medication?**

Yes. Education Code section 49414.7(c) states that if a pupil with epilepsy has been prescribed an emergency antiseizure medication by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employees receive training in the administration of an emergency antiseizure medication in the event that the pupil suffers a seizure when a nurse is not available.

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<sup>2</sup> Stats. 2011, ch 561, Senate Bill 161, Section 1.

**5. Must the school or charter school notify parents that their child may qualify for services or accommodations under Section 504 of the Rehabilitation Act or the Individuals with Disabilities Education Act (IDEA)?**

Yes. Education Code section 49414.7(d) states that the school or charter school shall notify the parent or guardian that his or her child may qualify for services or accommodations under Section 504 of the Rehabilitation Act or under the Individuals with Disabilities Education Act (IDEA). The school district or charter school shall assist the parent or guardian with the exploration of the option for a Section 504 Plan or IEP and encourage the parent or guardian to adopt that option if it is determined that the child is eligible for a Section 504 Plan or an IEP.

**6. May the school district or charter school ask the parent to sign a notice verifying that the parent was given information about Section 504 of the Rehabilitation Act or the IDEA?**

Yes. Education Code section 49414.7(e) states that a school or charter school may ask the parent or guardian to sign a notice verifying that the parent or guardian was given information about Section 504 of the Rehabilitation Act or the IDEA and that the parent or guardian understands that it is his or her right to request a Section 504 Plan or an IEP at any time. Education Code section 49414.7(f) states that a parent or guardian does not choose to have the pupil assessed for a Section 504 Plan or an IEP, the school or charter school may create an individualized health plan, seizure action plan, or other appropriate health plan designed to acknowledge and prepare for the child's health care needs in school. The plan may include the involvement of a trained volunteer school employee or a licensed vocational nurse.

**7. What are the requirements for training school employees under SB 161?**

Education Code section 49414.7(g) states that in training employees, the school district, county office of education or charter school shall ensure the following:

- A volunteer received training from a licensed health care professional regarding the administration of an emergency antiseizure medication. A staff member who has completed training shall, if he or she has not administered an emergency antiseizure medication within the prior two years and there is a pupil enrolled in the school who may need the administration of antiseizure medication, attend a new training program to retain the ability to administer an emergency antiseizure medication.
- Any agreement by an employee to administer an emergency antiseizure medication is voluntary, and an employee of the school or charter school, or are an employee of the school district or county office of education, or the charter school administrator, shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten or

coerce any staff member who does not choose to volunteer, including, but not limited to, direct contact with the employee.

- Any employee who volunteers may rescind his or her offer to administer an emergency antiseizure medication up to three days after the completion of the training. After that time, a volunteer may rescind his or her offer to administer an emergency antiseizure medication with a two-week notice, or until a new individual health plan or Section 504 plan has been developed for an affected employee, whichever is less.
- The school or charter school shall distribute an electronic notice no more than twice per school year per child to all staff that states the following information in bold print:
  - A. A description of the volunteer request, stating that the request is for volunteers to administer an emergency antiseizure medication to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse, and that this emergency antiseizure medication is an FDA approved, predosed, rectally administered gel that reduces the severity of epileptic seizures.
  - B. A description of the training that the volunteer will receive.
  - C. A description of the voluntary nature of the volunteer program.
  - D. The volunteer rescission timelines.
- The electronic notice described shall be the only means by which a school or charter school solicits volunteers.

**8. May a school employee be required to volunteer to administer an emergency antiseizure medication prior to the completion of training?**

No. Education Code section 49414.7(h) states that an employee who volunteers shall not be required to administer an emergency antiseizure medication until completion of the training program adopted by the school district, county office of education, or charter school and documentation of completion is recorded in the employee's personnel file.

**9. Must a school district, county office of education, or charter school provide defense and indemnification for any and all civil liability for employees who volunteer to administer an antiseizure drug?**

Yes. Education Code section 49414.7(i) states that if a school district, county office of education, or charter school elects to participate, the school district, county office of education, or charter school shall ensure that each employee who volunteers will be provided defense and indemnification by the school district, county office of education, or charter school for any and

all civil liability, in accordance with, but not limited to, that provided under the Tort Claims Act.<sup>3</sup> This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

**10. What procedures are required by SB 161 if no employees volunteer?**

Education Code section 49414.7(j) states that if there are no volunteers, then the school or charter school shall renotify the pupil's parent or guardian of the option to be assessed for services and accommodations guaranteed under Section 504 and the IDEA.

**11. What are the requirements for a school district plan under SB 161?**

Education Code section 49414.7(k) states that a school district, county office of education, or charter school that elects to participate shall have in place a school district, county office of education, or charter school plan that shall include, but not be limited to, all of the following:

- Identification of existing licensed staff within the district or region who could be trained in the administration of an emergency antiseizure medication and could be available to respond to an emergency need to administer an emergency antiseizure medication. The school district or charter school shall consult with the county office of education to obtain this information.
- Identification of pupils who may require the administration of an emergency antiseizure medication.
- Written authorization from the parent or guardian for a nonmedical school employee to administer an emergency antiseizure medication.
- The requirement that the parent or guardian notify the school or charter school that the pupil has had an emergency antiseizure medication administered within the past four hours on a schoolday.
- Notification of the parent or guardian, by the school or charter school administrator or, if the administrator is not available, by another school staff member, that an emergency antiseizure medication has been administered.
- A written statement from the pupil's health care practitioner that shall include, but not be limited to, all of the following:

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<sup>3</sup> See, Government Code section 810 et seq.

- A. The pupil's name.
- B. The name and purpose of the medication.
- C. The prescribed dosage.
- D. Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of an emergency antiseizure medication becomes necessary.
- E. The method of administration.
- F. The frequency with which the medication may be administered
- G. The circumstances under which the medication may be administered.
- H. Any potential adverse responses by the pupil and recommended mitigation actions, including when to call emergency services.
- I. A protocol for observing the pupil after a seizure, including, but not limited to, whether the pupil should rest in the school office, whether the pupil may return to class, and the length of time the pupil should be under direct observation.
- J. Following a seizure, the pupil's parent or guardian and the school nurse shall be contacted by the school or charter school administrator or, if the administrator is not available, by another school staff member to continue the observation plan.

**12. Are employees who volunteer to administer emergency antiseizure medication entitled to compensation?**

Education Code section 49414.7(l) states that a school district, county office of education, or charter school that elects to allow volunteers to administer an emergency antiseizure medication shall compensate a volunteer, in accordance with that employee volunteer's pay scale when the administration of an emergency antiseizure medication and the subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours.

**13. Is the California Department of Education, in consultation with the State Department of Public Health, required to develop guidelines for the training and supervision of employees in providing emergency medical assistance to pupils with epilepsy?**

Yes. Education Code section 49414.7(m) states the California Department of Education, in consultation with the State Department of Public Health, shall develop guidelines for the training and supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures and shall post this information on the California Department of Education's Internet Web site by July 1, 2012. The guidelines may be developed in cooperation with interested organizations. Upon development of the guidelines, the department shall approve the guidelines for distribution and shall make those guidelines available upon request. The California Department of Education shall include, on its Internet Web site, a clearinghouse for best practices in training non-medical personnel to administer an emergency antiseizure medication to pupils. Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

- Recognition and treatment of different types of seizures.
- Administration of an emergency antiseizure medication.
- Basic emergency follow-up procedures, including, but not limited to, a requirement for the school or charter school administrator to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the school or charter school or other staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.
- Techniques and procedures to ensure pupil privacy.

**14. Are school districts required to retain training materials?**

Yes. Education Code section 49414.7(m) further states that any written materials used in the training shall be retained by the school or charter school.

**15. Who may conduct the training of school employees to administer emergency antiseizure medication?**

Training established pursuant to Education Code section 49414.7(m) shall be conducted by one or more of the following:

- A physician and surgeon.
- A physician assistant.

- A credentialed school nurse.
- A registered nurse.
- A certificated public health nurse.

Training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions, and guidelines established pursuant to Section 49414.7 shall be deemed adequate training.

**16. What procedures should be followed if a school employee administers an emergency antiseizure medication?**

Education Code section 49414.7(n) states that the school or charter school administrator or, another school staff member shall notify the credentialed school nurse assigned to the school district, county office of education, or charter school if an employee at the school site administers an emergency antiseizure medication pursuant to Section 49414.7. If a credentialed school nurse is not assigned to the school district, county office of education, or charter school, the school or charter school administrator or, if the administrator is not available, another school staff member shall notify the superintendent of the school, or his or her designee, the county superintendent of schools, or his or her designee, or the charter school administrator, or his or her designee as appropriate, if an employee at the school site administers an emergency antiseizure medication. A school or charter school shall retain all records relating to the administration of an emergency antiseizure medication while a pupil is under the supervision of school staff. The pupil's parent or guardian shall provide all materials necessary to administer an emergency antiseizure medication. A school or charter school shall not be responsible for providing any of the necessary materials.

**17. How is the term "emergency antiseizure medication" defined in SB 161?**

Education Code section 49414.7(p) defines an "emergency antiseizure medication" as diazepam rectal gel and emergency medications approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures by persons without medical credentials. "Emergency medical assistance" means the administration of an emergency antiseizure medication to a pupil suffering from an epileptic seizure. Education Code section 49414.7(q) states that Section 49414.7 shall remain in effect until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

**18. May school districts begin training school employees to administer emergency antiseizure medication beginning January 1, 2012?**

SB 161 takes effect January 1, 2012. SB 161 authorizes unlicensed school employees to administer Diastat and other antiseizure medication to students who suffer seizures at school. Education Code section 49414.7(m) states that the training may be conducted by a physician, a physician assistant, a credentialed school nurse, a registered nurse, or a certified public health nurse. Section 49414.7(m) requires the California Department of Education to develop guidelines for the training and supervision of school district employees in providing emergency medical assistance to students with epilepsy and to post this information on their website by July 1, 2012.

During the period January 1, 2012 through July 1, 2012, if the California Department of Education has not posted information or guidelines for the training and supervision of school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures, school districts may wish to train employees using guidelines developed by the Epilepsy Alliance of Orange County or other organizations which are consistent with the requirement of Education Code section 49414.7 (m)(3),<sup>4</sup> which include, but are not limited to, the following:

- Recognition and treatment of different types of seizures.
- Administration of an emergency antiseizure medication.
- Basic emergency follow-up procedures, including, but not limited to, a requirement for the school or charter school administrator to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the school or charter school or other staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.
- Techniques and procedures to ensure pupil privacy.

While it may be argued by some groups that school districts may not implement training of school employees until CDE posts its training guidelines, we interpret Education Code section 49414.7 as allowing the implementation of training of school employees so long as the training is consistent with Education Code section 49414.7. During the interim period from January 1, 2012 to July 1, 2012, the risk in training employees to administer emergency antiseizure medication using guidelines developed by the Epilepsy Alliance of Orange County or other groups is less than the risk of not training employees if a child suffers a seizure, the medication is not administered in a timely manner, and the child suffers serious injury or death as a result.

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<sup>4</sup> Districts that have previously trained volunteer employees to administer Diastat or other emergency antiseizure medications may continue their present practices if the training that was provided complied with Section 49414.7(b) and 49414.7(m)(3).

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Since SB 161 is somewhat unclear on this point, school districts may wish to utilize outside organizations such as the Epilepsy Alliance of Orange County to provide training from January 1 to July 1, 2012.

Our office will be available to discuss the risks involved and will be glad to consult with each individual school district.

RDW:vld



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October 26, 2009

OPAD 09-63

To: District Superintendents  
Regional Occupational Program Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Assistant Superintendents of Instruction  
SELPA Directors  
Special Education Directors  
Directors of Child Welfare and Attendance

From: Ronald D. Wenkart  
General Counsel

Re: Administration of Medication/Physical Healthcare Services by District Employees

We have been asked whether a school district may require teachers and classified employees to administer Diastat and other medications as well as provide specialized physical healthcare services to students. In many districts, the employees have been trained in the administration of Diastat and other medications and specialized physical healthcare services, and the past practice of the district has been for teachers and classified instructional aides to administer Diastat, other medications, and physical healthcare services.

In our opinion, a school district may require teachers and classified staff to administer medications and provide specialized physical healthcare services to students if the school district has had a consistent past practice of requiring teachers and classified employees to provide such services.

### PAST PRACTICE

The Public Employment Relations Board (PERB) has defined a binding past practice as one that is unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. A valid past practice is one that is regular and consistent or historic and accepted.<sup>1</sup> The Court of Appeal

<sup>1</sup> California State Employees Association, SEIU Local 1000, PERB Decision No. SA-C0-237-S, 26 PERC 33058, p. 196 (2002).

in Riverside Sheriff's Association v. County of Riverside,<sup>2</sup> adopted the PERB definition of past practice. CSEA's allegation that the school district has made a unilateral change in working conditions is without merit since it has been the consistent past practice of the district to require teachers and classified instructional aides to administer Diastat, other medications, and to perform physical healthcare services, such as catheterization, gastric tube feeding and tracheotomy suction for a number of years.

In United Educators of San Francisco v. San Francisco Unified School District,<sup>3</sup> the PERB upheld the dismissal of an unfair labor practice charge brought by the employee organization. The PERB held that the employee organization failed to allege sufficient facts to support an unfair labor practice charge.

The PERB noted that a public school employer's unilateral change in terms and conditions of employment constitutes a per se violation of the Education Employment Relations Act (EERA) if:

1. The employer breached or altered the parties' written agreement or its own established past practice;
2. Such action is taken without giving the other party notice or an opportunity to bargain over the change;
3. The change was not merely an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and
4. The change in policy concerns a matter within the scope of representation.<sup>4</sup>

The PERB has held that the assignment of work is a nonnegotiable management prerogative if the newly assigned work is reasonably related to existing duties performed by employees.<sup>5</sup> If the changes are reasonably comprehended within the existing job duties, an assignment of such duties, even if never performed before, is not a violation.<sup>6</sup> If there has been no newly assigned work and it has been the consistent past practice of the district to require teachers and classified instructional aides to administer medication and to provide specialized

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<sup>2</sup> 106 Cal.App.4<sup>th</sup> 1285, 131 Cal.Rptr.2d 454 (2003).

<sup>3</sup> 33 PERC 145, Case No. 2057 (2009).

<sup>4</sup> *Id.* at 145; citing Walnut Valley Unified School District, PERB Decision No. 160 (1981); Grant Joint Union High School District, PERB Decision No. 196 (1982).

<sup>5</sup> City and County of San Francisco, PERB Decision No. 1608-M (2004).

<sup>6</sup> Rio Honda Community College District, PERB Decision No. 279 (1982).

physical healthcare, then there has not been a unilateral change in working conditions and no violation of the Education Employment Relations Act (EERA).<sup>7</sup>

### STATUTORY PROVISIONS

Education Code section 49423 states that any pupil who is required to take medication during the regular school day prescribed by a physician may be assisted by the school nurse or other designated school personnel.<sup>8</sup> Section 49423 does not require the consent of the employee.

Education Code section 49423.5 states that a special education student who requires specialized physical healthcare during the regular school day may be assisted by qualified persons who possess an appropriate credential or qualified designated school personnel trained in the administration of specialized physical healthcare if they perform those services under the supervision of a credentialed school nurse, public health nurse or licensed physician and the services are determined by the credentialed school nurse to be all of the following:

1. Routine for the pupil.
2. Pose little potential harm for the pupil.
3. Performed with predictable outcomes, as defined in the IEP of the pupil.
4. Do not require a nursing assessment, interpretation or decisionmaking by the designated school personnel.

Specialized physical healthcare services include catheterization, gastric tube feeding, suctioning or other services that require medically-related training. Section 49423.5 does not require designated school personnel to consent to the assignment of these duties.

### STATUTORY CONSTRUCTION

In interpreting a set of statutes, the cardinal or fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law.<sup>9</sup>

In Dyna-Med, Inc. v. Fair Employment and Housing Commission,<sup>10</sup> the California Supreme Court stated:

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<sup>7</sup> Government Code section 3540 et seq.

<sup>8</sup> The use of the word "designated" in the statute indicates that the school district may designate or require an employee to administer medication or provide specialized physical healthcare without the employee's consent.

<sup>9</sup> See, Select Base Materials Inc. v. Board of Equalization, 51 Cal.2d 640, 335 P.2d 272 (1959); Palmer v. GTE California Inc., 30 Cal.4<sup>th</sup> 1265, 135 Cal.Rptr.2d 654, 70 P.3d 1067 (2003).

<sup>10</sup> 43 Cal.3d 1379, 1386-87, 241 Cal.Rptr. 67 (1987).

“Pursuant to established principles, our first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided. The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally, and with each other, to the extent possible. . . .Where uncertainty exists consideration should be given to the consequences that will flow from a particular interpretation. . . . Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining the legislative intent. . . .”<sup>11</sup>

Generally, the courts will give statutory words their plain or literal meaning if the statute is clear and unambiguous.<sup>12</sup> The courts may not, under the guise of statutory construction, rewrite the law or give the words a meaning different from the plain and direct import of the terms used.<sup>13</sup> The words of the statute must be read in context considering the nature and purpose of the statutory enactment.<sup>14</sup> The courts must follow the language used and give to it its plain meaning.<sup>15</sup>

In the present case, the words in Education Code sections 49423 and 49423.5 are clear and unambiguous. Both statutes do not contain any language that requires the consent of the employee as a requirement for assigning a certificated or classified employee to administer medication or to perform specialized physical healthcare. Certainly, if the Legislature intended to require school districts to obtain the consent of employees before assigning employees to these tasks, the Legislature would have added that language to Sections 49423 and 49423.5. Therefore, the plain meaning of Sections 49423 and 49423.5 is clear – neither statute requires the consent of the employee before directing an employee to administer medication or provide specialized physical healthcare.

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<sup>11</sup> Id. at 1386-87. See, also, Palmer v. GTE California, Inc., 30 Cal.4<sup>th</sup> 1265, 1271, 135 Cal.Rptr.2d 654 (2003).

<sup>12</sup> City of Pasadena v. AT&T Communications of California Inc., 103 Cal.App.4<sup>th</sup> 981, 127 Cal.Rptr.2d 276 (2002). The plain meaning of the statute will govern and the court will give effect to the words of the statute according to the usual ordinary import of the language employed. Phelps v. Stostad, 16 Cal.4<sup>th</sup> 23, 65 Cal.Rptr.2d 360, 939 P.2d 760 (1997).

<sup>13</sup> City of Pasadena v. AT&T Communications of California Inc., 103 Cal.App.4<sup>th</sup> 981, 127 Cal.Rptr.2d 276 (2002); citing California Federal Savings and Loan Association v. City of Los Angeles, 11 Cal. 4<sup>th</sup> 342, 349, 45 Cal.Rptr.2d 279 (1995).

<sup>14</sup> Phelps v. Stostad, 16 Cal.4<sup>th</sup> 23, 32, 65 Cal.Rptr.2d 360, 939 P.2d 760 (1997).

<sup>15</sup> City of Pasadena v. AT&T Communications of California Inc., 103 Cal.App.4<sup>th</sup> 981, 984, 127 Cal.Rptr.2d 276 (2002).

## THE TITLE 5 REGULATIONS

Pursuant to Education Code sections 49423 and 49423.6, the California Department of Education has adopted regulations relating to the administration of medication but not specialized physical healthcare.<sup>16</sup> The regulations define “other designated school personnel” as including any individual employed by the local educational agency who has consented to administer the medication to the student or otherwise assist the student in the administration of medication, and may legally administer the medication to the student or otherwise assist the student in the administration of medication.<sup>17</sup> The regulations state that other designated school personnel may administer medication to pupils or otherwise assist pupils in the administration of medication as allowed by law.<sup>18</sup>

The controlling statute does not require that school personnel consent to administer the medication. Therefore, it appears that the regulations may exceed their statutory authority and go beyond the scope of the statute.<sup>19</sup> The regulation, to be valid, must be consistent with the statute, not conflict with the statute, and must be reasonably necessary to effectuate the purpose of the statute.<sup>20</sup>

An administrative agency, such as the California Department of Education, has no authority to promulgate a regulation that is inconsistent with the controlling law or expands the scope of the controlling law.<sup>21</sup> Therefore, the addition of a requirement that the employee consent to the administration of medication enlarges the scope of Education Code sections 49423 and the CDE may not promulgate such a requirement. Each regulation adopted, to be effective, must be within the scope of authority conferred by other provisions of law.<sup>22</sup>

## THE SCOPE OF REGULATORY AUTHORITY

For example, in Interinsurance Exchange of the Automobile Club v. Superior Court,<sup>23</sup> the Court of Appeal held that the opinion of the Department of Insurance is not entitled to deference. In Interinsurance Exchange, the court was required to interpret Insurance Code section 381(f). Section 381(f) required that an insurance policy include a statement of the amount of the premium. The Department of Insurance issued an opinion that the Interinsurance Exchange

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<sup>16</sup> See, 5 Cal. Code of Regs. Sections 600-611.

<sup>17</sup> 5 Cal. Code of Regs. Section 601(e).

<sup>18</sup> 5 Cal. Code of Regs. Section 604(b). Significantly, the regulations do not address specified physical healthcare.

<sup>19</sup> Government Code section 11342.2.

<sup>20</sup> *Ibid.*

<sup>21</sup> Interinsurance Exchange of the Automobile Club v. Superior Court, 148 Cal.App.4<sup>th</sup> 1218, 56 Cal.Rptr.3d 421 (2007); Cinquegrani v. Department of Motor Vehicles, 163 Cal.App.4<sup>th</sup> 741, 77 Cal.Rptr.3d 816 (2008); Whitcomb Hotel Inc. v. California Employment Commission, 24 Cal.2d 753, 151 P.2d 233 (1944).

<sup>22</sup> Government Code section 11342.1.

<sup>23</sup> 148 Cal.App.4<sup>th</sup> 1218, 56 Cal.Rptr.3d 421 (2007). Significantly, the Department of Insurance had not promulgated any regulations, but issued only an opinion.

violated the statute by not including in the premium statement the fee charged for making installment payments of the annual premium.

Under the rules of statutory construction, the Court of Appeal held that it was required to give effect to statutes according to the usual ordinary import of the language employed in framing them. When the statutory language is clear and unambiguous, there is no need for construction and the courts should not indulge in it. The courts have declined to follow the plain meaning of the statute only when it would inevitably frustrate the manifest purposes of legislation as a whole and lead to absurd results.<sup>24</sup>

The Court of Appeal held that it is not the duty of the courts to amend the statute, but to ascertain and declare the terms and substance contained in the statute, not to insert what has been omitted or omit what has been inserted. The courts may not, under the guise of construction, rewrite the law or give the words a meaning different from the plain and direct meaning of the terms used.<sup>25</sup>

The Court of Appeal held that the language of the statute was clear and unambiguous and, thus, not reasonably susceptible to more than one meaning.<sup>26</sup> Therefore, the courts or the California Department of Education may not insert words into Education Code sections 49423 to require the consent of the employee before a school district assigns a certificated or classified employee the task of administering medication.<sup>27</sup>

The Court of Appeal in Interinsurance Exchange held that the trial court erred in giving deference to the Department of Insurance's opinion. The Court of Appeal held that the courts are not required to defer to administrative policies that are not formally adopted as regulations, and that the courts may determine independently the meaning of statutory provisions.<sup>28</sup> The Court of Appeal went on to state that an agency does not have the authority to alter or amend the statute or enlarge or impair its scope. The ultimate interpretation of the statute is an exercise of the judicial power.<sup>29</sup>

Accordingly, the Court of Appeal held that a tentative administrative interpretation of the statute makes no pretense at finality and it is the duty of the court to state the true meaning of the

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<sup>24</sup> Id. at 1230; citing, People v. Leal, 33 Cal.App.4<sup>th</sup> 999, 1007, 16 Cal.Rptr.3d 869 (2004).

<sup>25</sup> Id. at 1230; citing, California Federal Savings and Loan Association v. City of Los Angeles, 11 Cal.4<sup>th</sup> 342, 349, 45 Cal.Rptr.2d 279 (1995).

<sup>26</sup> Id. at 1229-30.

<sup>27</sup> It should be noted that in the case of Section 49423 (administration of medication), the California Department of Education has promulgated regulations which insert words requiring the consent of the employee, but in the case of Section 49423.5 (specialized physical healthcare), there are no regulations and no written opinion from the California Department of Education.

<sup>28</sup> Id. at 1236-37; citing, Agnew v. State Board of Equalization, 21 Cal.4<sup>th</sup> 310, 322, 87 Cal.Rptr.2d 423 (1999).

<sup>29</sup> Id. at 1236; citing, Morris v. Williams, 67 Cal.2d 733, 748 (1967); First Industrial Loan Company v. Daugherty, 26 Cal.2d 545, 550 (1945); Bodinson Manufacturing Company v. California Energy Commission, 17 Cal.2d 321, 326 (1941).

statute finally and conclusively, even when it requires the overturning of an earlier erroneous administrative construction.<sup>30</sup> Therefore, the Court of Appeal concluded that the proper interpretation of Insurance Code section 381(f) was that the statute requiring insurance companies to state the premium in their insurance policy did not include an interest charge or fee for installment payments of the annual premium. The Court of Appeal held that if the Legislature wished to expand the meaning of the term “premium” beyond its plain and ordinary meaning, then the Legislature must amend the statute to expressly define the term “premium” to include the interest or fees for installment payments.<sup>31</sup>

In Cinquegrani v. Department of Motor Vehicles,<sup>32</sup> the Court of Appeal held that the Department of Motor Vehicles (DMV) was not authorized to expand the scope of the statute and automatically suspend the driver’s licenses of individuals convicted of boating under the influence. The Court of Appeal found that the DMV had rewritten the statute to read that a conviction for boating under the influence would be considered the same as a conviction for driving under the influence.<sup>33</sup> The Court of Appeal stated:

“The DMV’s misinterpretation of the statute does not provide a legal basis for an otherwise unauthorized punishment. ‘Administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is void,’ which is true of actions that alter, amend, enlarge or impair a statute.”<sup>34</sup>

In Whitcomb Hotel Inc. v. California Employment Commission,<sup>35</sup> the California Supreme Court held that the California Employment Commission could not limit disqualification or unemployment benefits to four weeks or six weeks when the statute required that the disqualification for refusing employment is indefinite. The California Supreme Court held that the intent of the statute was to disqualify indefinitely individuals who refuse gainful employment after being laid off. The Supreme Court held that an administrative officer may not make a rule or regulation that alters or enlarges the terms of a legislative enactment.<sup>36</sup> The court held that an erroneous administrative construction does not govern the interpretation of a statute.<sup>37</sup>

Similarly, the California Department of Education cannot impose an additional requirement not found in the statute. The California Department of Education cannot impose a requirement on school districts that they obtain the consent of employees before assigning the

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<sup>30</sup> Id. at 1236.

<sup>31</sup> Id. at 1237.

<sup>32</sup> 163 Cal.App.4<sup>th</sup> 741, 77 Cal.Rptr.3d 816 (2008).

<sup>33</sup> Id. at 748.

<sup>34</sup> Id. at 750-51; quoting from Association for Retarded Citizens v. Department of Developmental Services, 38 Cal.3d 384, 391, 211 Cal.Rptr. 758 (1985).

<sup>35</sup> 24 Cal.2d 753, 151 P.2d 233 (1944).

<sup>36</sup> Id. at 757.

<sup>37</sup> Id. at 757-58.

employee the duty of administering medication or performing specialized physical healthcare services.

### CONCLUSION

In our opinion, based on the above statutory provisions and case law, if the school district has had a consistent past practice of requiring teachers and classified instructional aides to administer Diastat and other medications as well as provide specialized physical healthcare services to students, there is no violation of the EERA. Therefore, the continued practice of requiring teachers and classified instructional aides to provide these services is not a unilateral change in working conditions. In addition, the assignment of work is a nonnegotiable management prerogative if the newly assigned work is reasonably related to existing duties performed by employees.

Education Code sections 49423 and 49423.5 authorize designated school personnel to administer medication and provide specialized physical healthcare. While the regulations require the consent of an employee to administer medication, in our opinion, the regulation is void since it exceeds the scope of the statutory requirements in Section 49423.<sup>38</sup> The regulations do not address the administration of specialized physical healthcare, so there is no requirement that the employee consent to the provision of specialized physical healthcare.

Therefore, in our opinion, a school district may direct teachers and classified instructional aides to administer medication and provide specialized physical healthcare services to students if the school district has had a consistent past practice of requiring teachers and classified employees to provide such services.

If you have any further questions, please do not hesitate to contact our office.

RDW:vld

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<sup>38</sup> See, 5 Cal. Code of Regs. 601.



## SCHOOLS LEGAL SERVICE

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July 19, 2012

OPAD 12-40

To: District Superintendents  
Regional Occupational Program Superintendents  
Assistant Superintendents of Business  
Assistant Superintendents of Human Resources  
Assistant Superintendents of Instruction

From: Karen T. Meyers  
Counsel

Re: Defense and Indemnification for Claims  
Arising from Administration of Anti-Seizure Medication

Several districts have asked for a sample letter to be distributed to employees who volunteer to administer anti-seizure medication. Education Code section 49414.7(i) requires districts to provide this letter to employees and place a copy in their personnel file.

If you have any questions about this matter, please do not hesitate to contact this office.

KTM:las  
Attachments

**CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION**  
**LEGISLATION STRATEGY BILL ANALYSIS**

**SB 161 (Huff), SCHOOLS:** Emergency medical assistance; administration of epilepsy medication.

**Effective Date:** January 1, 2012 until January 1, 2017.

**Bargaining Unit Employees Affected:** All classified employees in merit and non-merit school districts, county offices of education, or charter schools (K-12). Referenced herein as "District".

**Code/Section Amended or Modified:** Education Code section 49414.7

**Summary or Analysis of Bill:**

SB 161, Chapter 560, statutes of 2011 authorizes a District who has pupils with epilepsy suffering from seizures to request classified employees, on a volunteer basis, to provide emergency medical assistance to these pupils. The emergency medical assistance is for the administration of an "anti-seizure medication" called diazepam rectal gel; otherwise currently known and referred herein as "Diatat." The new law has a number of requirements and offers some protections for classified employees, which is discussed below.

**CSEA Position/Interpretation:** This bill contains very important safeguards and protections for classified employees; the most important of which is that the training and administration of Diatat is voluntary. The full scope of protections must be circulated to all of our members. These protections include notice mandates, training requirements, no intimidation, rescission rights, and indemnification.

1. **Voluntary:** Any agreement for a classified employee to provide medical assistance to pupils with epilepsy suffering from seizures must be **voluntary**. A classified employee who does not volunteer, or who has not been trained, shall not be required to provide emergency medical assistance.
  - a. **No Intimidation:** The new law requires that the employer "shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any employee who does not choose to volunteer, including, but not limited to, direct contact with the employee." Therefore, classified employees who do not volunteer to be trained to administer Diatat may not be disciplined, laid off, or have their hours reduced because they do not volunteer.
  - b. **Method of Notice:** The request for volunteers can **only** be sent by electronic notice, no more than two (2) times per school year, per child, to all staff. Please note that the electronic notice is the only method a District can use to communicate their request for volunteers. Also, important to note is that Districts can not send the notice to individual employees or certain classifications. The notice has to go to **all** school employees.

- i. The notice must include:
  1. A description of the volunteer request including the purpose (administration of Diastat)
  2. A description of the training to be received
  3. A description of the voluntary nature of the program, and
  4. The volunteer rescission timelines discussed below.
2. Rescission: Any classified employee who volunteers may rescind his/her offer to administer medication up to three (3) days after the completion of the training. After that time, a volunteer may rescind his/her offer with a two week notice, or until a new health plan has been developed for the affected pupil, whichever is less.
3. Training and Related Issues: The District shall provide classified employees who volunteer with emergency medical training as follows:
  - a. The volunteer will receive training from a licensed health care professional regarding the administration of Diastat.
    - i. If the classified employee has not administered the medication within the prior two (2) years, and there is a pupil enrolled who may need the administration of same, the employee shall attend a new training program to retain the ability to administer Diastat.
  - b. Training shall be provided by a physician or surgeon, physician's assistant, a credentialed school nurse, a registered nurse, or a certified public health certificated nurse.
  - c. Recognition and treatment of different types of seizures.
  - d. Basic emergency follow-up procedures. This requires the District to identify a school administrator or, if the administrator is not available, another staff member to call emergency 911 and to contact the pupil's parent or guardian. It does not require a pupil to be transported to an emergency room. It also requires the school administrator or staff member to notify the school nurse assigned to the District. If no school nurse is assigned, the superintendent or designee must be notified when Diastat is administered.
  - e. Techniques and procedures to ensure pupil privacy.
  - f. All written materials used in the training shall be retained by the school.
  - g. Training documentation must be received by the classified employee volunteer and recorded in their personnel file before they can administer Diastat.
  - h. The State Department of Education will include a list of best practices in training classified employees in administering Diastat.

4. Follow-up Observation: A protocol for observing the pupil after a seizure and the length of time the pupil should be under direct observation will be established. Any required observation time beyond a classified employee's normally scheduled work hours is subject to payment for such time. The parent and school nurse shall be contacted by the administrator or another school staff member to continue the observation plan.
5. Indemnity: Any classified employee who volunteers to administer Diastat will be provided defense and indemnification by the District for any and all civil liability; this includes punitive damages. This information shall be provided in writing to the volunteer and retained in his/her personnel file. If an employee is sued in the performance of administering an anti-seizure medication, the District will be required to both hire a lawyer to defend the lawsuit and also to pay any damages (including punitive) if the classified employee volunteer loses the case.

**Discussion of Possible Strategies/Tactics:**

It is essential that CSEA classified employees are aware that the administration of Diastat by classified employees is voluntary. If your District has, or will have, a pupil that requires administration of Diastat, the first course of action is to identify an RN or LVN that can perform the service. Some Districts have created LVN job descriptions in the classified bargaining unit who perform administration of Diastat as part of their job duties. This work can also be performed by certificated employees or administrators.

However, if the District is unwilling to contemplate such action and instead reaches out to staff for volunteers, it is imperative to put the District on notice that they must meet and negotiate the effects of the implementation of SB 161.

**Note: It is important that a District not be allowed to add the administration of "anti-seizure medication (currently Diastat) into any classified job description since it is always a voluntary decision by the classified employee.**

*[District Letterhead]*

To: [Name of Employee]

From:

Date:

Re: Defense and Indemnification for Claims Arising from Administration of Anti-Seizure Medication

You have voluntarily agreed to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian. Pursuant to Education Code section 49414.7(i), you are hereby informed that the District will provide a legal defense for any civil action or proceeding brought against you, in your official or individual capacity or both, on account of an act or omission in the scope of your employment as an employee of the District.

The District also shall indemnify you (i.e., pay the judgment) for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. Please contact me if you have any questions regarding the above.

Encl. (Educ. Code § 49414.7)

cc: Personnel File

## CTA Legal Advisory

The following bullets are excerpts from a ***Bargaining and Legal Advisory from the CTA/Negotiations & Organizational Development Department***. For the full report contact your CTA representative.

"SB 161 (Huff) was signed into law in October 2011 and adds a new provision to the Education Code - Section 49414.7 - that allows public education employers, upon a parents request, to provide non-licensed school employees with voluntary training on the administration of emergency antiseizure medication, including Diastat, to epileptic students.

The legislation contains the following key elements (only a few are listed here):

- It enables a school district, county office of education, or charter school to elect to participate in a program to allow non-licensed employees to volunteer to be trained to administer emergency antiseizure medication to a student experiencing an epileptic seizure. Our view (CTA's) is that it does not ***require*** the employer to adopt such a program.
- The employer may adopt such a program only if ***no*** credentialed school nurse or other licensed nurse is onsite at the school that the student attends. Whenever possible, a school nurse or trained licensed vocational nurse should administer emergency antiseizure medication.
- Diastat is generally administered with a syringe, and it is an "emergency antiseizure medication" under the statute. The statute also defines such medications as those approved by the FDA for epileptic patients 'for the management of seizures' by nonmedical persons; however, it is not clear which if any medications fall into this category other than Diastat.
- If the employer adopts a training program for volunteer staff, it must distribute an ***electronic*** notice to all staff (no more than twice per year per child) regarding the request for volunteers. The electronic notice must contain specified information, including a description of the voluntary nature of the program. The electronic notice is the ***only*** means by which an employer may solicit volunteers.
- A non-licensed employee's decision to be trained must be ***truly voluntary***. No administrator or employee may directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, or coercing employees who choose not to volunteer.
- CDE , in consultation with the State Department of Public Health, must develop training and supervision guidelines regarding Diastat administration, and it must publish those guidelines by July 1, 2012. CDE must also publish on its website "a clearinghouse of best practices' in training nonmedical personnel to administer emergency antiseizure medication.
- A classified employee who volunteers will get paid overtime if Diastat administration and subsequent student monitoring require the volunteer to work beyond normally scheduled hours.
- Similar to the existing glucagon statute (Ed. Code Section 49414.5), SB 161 appears to create an exception to the Nursing Practice Act's general prohibition on the administration of prescription medications by non-licensed persons."

CTA concludes with "while we believe that only licensed personnel should administer antiseizure medication to students, SB 161 has been enacted into law, and associations should be prepared to advise members accordingly...."

CSNO will continue to keep you informed regarding these important issues. If you have any questions please contact [csnoexec@gmail.com](mailto:csnoexec@gmail.com).

## C

Effective: January 1, 2012

West's Annotated California Codes CurrentnessEducation Code (Refs & Annos)Title 2. Elementary and Secondary Education (Refs & Annos)Division 4. Instruction and Services (Refs & Annos)Part 27. Pupils (Refs & Annos)Chapter 9. Pupil and Personnel Health (Refs & Annos)Article 1. General Powers--School Boards (Refs & Annos)

→→ § 49414. 7. Absence of credentialed or other licensed nurse onsite; program to allow nonmedical employees to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures; training; eligibility of students for Section 504 plan or individualized education plan; civil liability; compensation; guidelines; notification of administration of medication

(a) It is the intent of the Legislature that, whenever possible, an emergency antiseizure medication should be administered by a school nurse or licensed vocational nurse who has been trained in its administration.

(b) Notwithstanding Sections 2052 and 2732 of the Business and Professions Code, in the absence of a credentialed school nurse or other licensed nurse onsite at the school or charter school, a school district, county office of education, or charter school may elect to participate in a program, pursuant to this section, to allow nonmedical employees to volunteer to provide medical assistance to pupils with epilepsy suffering from seizures, upon request by a parent or guardian pursuant to subdivision (c). If the school district, county office of education, or charter school elects to participate in a program pursuant to this section, the school district, county office of education, or charter school shall provide school employees who volunteer pursuant to this section with voluntary emergency medical training, that is consistent with the training guidelines established pursuant to subdivision (m), to provide emergency medical assistance to pupils with epilepsy suffering from seizures. A school employee with voluntary emergency medical training shall provide this emergency medical assistance using guidelines approved on the department's Internet Web site pursuant to subdivision (m), and the performance instructions set forth by the licensed health care provider of the pupil. A school employee who does not volunteer or who has not been trained pursuant to subdivision (m) shall not be required to provide emergency medical assistance pursuant to this section.

(c) If a pupil with epilepsy has been prescribed an emergency antiseizure medication by his or her health care provider, the pupil's parent or guardian may request the pupil's school to have one or more of its employees receive training pursuant to this section in the administration of an emergency antiseizure medication in the event that the pupil suffers a seizure when a nurse is not available.

(d) Pursuant to Section 504 of the federal Rehabilitation Act of 1973, as amended, (29 U.S.C. Sec. 794), and the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), upon receipt of the parent's or guardian's request pursuant to subdivision (c), the school or charter school shall notify the parent or guardian that his or her child may qualify for services or accommodations under the Section 504 plan or an individualized education program, assist the parent or guardian with the exploration of that option, and encourage the parent or guardian to

adopt that option if it is determined that the child is eligible for a **Section 504** plan or an individualized **education** program.

(e) The school or charter school may ask the parent or guardian to sign a notice verifying that the parent or guardian was given information about **Section 504** of the federal Rehabilitation Act of 1973 and the federal Individuals with Disabilities **Education** Act (20 U.S.C. Sec. 1400 et seq.), and that the parent or guardian understands that it is his or her right to request a **Section 504** plan or an individualized **education** program at any time.

(f) If the parent or guardian does not choose to have the pupil assessed for a **Section 504** plan or an individualized **education** program, the school or charter school may create an individualized health plan, seizure action plan, or other appropriate health plan designed to acknowledge and prepare for the child's health care needs in school. The plan may include the involvement of trained volunteer school employees or a licensed vocational nurse.

(g) In training employees pursuant to this section, the school district, county office of education, or charter school shall ensure the following:

(1) A volunteer receives training from a licensed health care professional regarding the administration of an emergency antiseizure medication. A staff member who has completed training shall, if he or she has not administered an emergency antiseizure medication within the prior two years and there is a pupil enrolled in the school who may need the administration of an antiseizure medication, attend a new training program to retain the ability to administer an emergency antiseizure medication.

(2) Any agreement by an employee to administer an emergency antiseizure medication is voluntary, and an employee of the school or charter school or an employee of the school district or county office of education, or the charter school administrator, shall not directly or indirectly use or attempt to use his or her authority or influence for the purpose of intimidating, threatening, coercing, or attempting to intimidate, threaten, or coerce any staff member who does not choose to volunteer, including, but not limited to, direct contact with the employee.

(3) Any employee who volunteers pursuant to this section may rescind his or her offer to administer an emergency antiseizure medication up to three days after the completion of the training. After that time, a volunteer may rescind his or her offer to administer an emergency antiseizure medication with a two-week notice, or until a new individual health plan or **Section 504** plan has been developed for an affected pupil, whichever is less.

(4) The school or charter school shall distribute an electronic notice no more than twice per school year per child to all staff that states the following information in bold print:

(A) A description of the volunteer request, stating that the request is for volunteers to administer an emergency anti-seizure medication to a pupil experiencing a severe epileptic seizure, in the absence of a school nurse, and that this emergency antiseizure medication is an FDA approved, predosed, rectally administered gel that reduces the severity of epileptic seizures.

(B) A description of the training that the volunteer will receive pursuant to paragraph (1).

(C) A description of the voluntary nature of the volunteer program, which includes the information described in paragraph (2).

(D) The volunteer rescission timelines described in paragraph (3).

(5) The electronic notice described in paragraph (4) shall be the only means by which a school or charter school so-

licits volunteers.

(h) An employee who volunteers pursuant to this **section** shall not be required to administer an emergency antiseizure medication until completion of the training program adopted by the school district, county office of **education**, or charter school and documentation of completion is recorded in his or her personnel file.

(i) If a school district, county office of **education**, or charter school elects to participate pursuant to this **section**, the school district, county office of **education**, or charter school shall ensure that each employee who volunteers under this **section** will be provided defense and indemnification by the school district, county office of **education**, or charter school for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with **Section 810**) of Title 1 of the **Government Code**. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

(j) If there are no volunteers, then the school or charter school shall renotify the pupil's parent or guardian of the option to be assessed for services and accommodations guaranteed under **Section 504** of the federal Rehabilitation Act of 1973 and the federal Individuals with Disabilities **Education Act** (20 U.S.C. Sec. 1400 et seq.).

(k) A school district, county office of **education**, or charter school that elects to participate pursuant to this **section** shall have in place a school district, county office of **education**, or charter school plan that shall include, but not be limited to, all of the following:

(1) Identification of existing licensed staff within the district or region who could be trained in the administration of an emergency antiseizure medication and could be available to respond to an emergency need to administer an emergency antiseizure medication. The school district or charter school shall consult with the county office of education to obtain this information.

(2) Identification of pupils who may require the administration of an emergency antiseizure medication.

(3) Written authorization from the parent or guardian for a nonmedical school employee to administer an emergency antiseizure medication.

(4) The requirement that the parent or guardian notify the school or charter school if the pupil has had an emergency antiseizure medication administered within the past four hours on a schoolday.

(5) Notification of the parent or guardian, by the school or charter school administrator or, if the administrator is not available, by another school staff member, that an emergency antiseizure medication has been administered.

(6) A written statement from the pupil's health care practitioner that shall include, but not be limited to, all of the following:

(A) The pupil's name.

(B) The name and purpose of the medication.

(C) The prescribed dosage.

(D) Detailed seizure symptoms, including frequency, type, or length of seizures that identify when the administration of an emergency antiseizure medication becomes necessary.

(E) The method of administration.

(F) The frequency with which the medication may be administered.

(G) The circumstances under which the medication may be administered.

(H) Any potential adverse responses by the pupil and recommended mitigation actions, including when to call emergency services.

(I) A protocol for observing the pupil after a seizure, including, but not limited to, whether the pupil should rest in the school office, whether the pupil may return to class, and the length of time the pupil should be under direct observation.

(J) Following a seizure, the pupil's parent and guardian and the school nurse shall be contacted by the school or charter school administrator or, if the administrator is not available, by another school staff member to continue the observation plan as established in subparagraph (I).

(I) A school district, county office of education, or charter school that elects to allow volunteers to administer an emergency antiseizure medication shall compensate a volunteer, in accordance with that employee volunteer's pay scale pursuant to Section 45128, when the administration of an emergency antiseizure medication and subsequent monitoring of a pupil requires a volunteer to work beyond his or her normally scheduled hours.

(m)(1) The department, in consultation with the State Department of Public Health, shall develop guidelines for the training and supervision of school and charter school employees in providing emergency medical assistance to pupils with epilepsy suffering from seizures and shall post this information on the department's Internet Web site by July 1, 2012. The guidelines may be developed in cooperation with interested organizations. Upon development of the guidelines, the department shall approve the guidelines for distribution and shall make those guidelines available upon request.

(2) The department shall include, on its Internet Web site, a clearinghouse for best practices in training nonmedical personnel to administer an emergency antiseizure medication to pupils.

(3) Training established pursuant to this subdivision shall include, but not be limited to, all of the following:

(A) Recognition and treatment of different types of seizures.

(B) Administration of an emergency antiseizure medication.

(C) Basic emergency followup procedures, including, but not limited to, a requirement for the school or charter school administrator or, if the administrator is not available, another school staff member to call the emergency 911 telephone number and to contact the pupil's parent or guardian. The requirement for the school or charter school administrator or other school staff member to call the emergency 911 telephone number shall not require a pupil to be transported to an emergency room.

(D) Techniques and procedures to ensure pupil privacy.

(4) Any written materials used in the training shall be retained by the school or charter school.

(5) Training established pursuant to this subdivision shall be conducted by one or more of the following:

(A) A physician and surgeon.

(B) A physician assistant.

(C) A credentialed school nurse.

(D) A registered nurse.

(E) A certificated public health nurse.

(6) Training provided in accordance with the manufacturer's instructions, the pupil's health care provider's instructions, and guidelines established pursuant to this section shall be deemed adequate training for purposes of this section.

(n)(1) The school or charter school administrator or, if the administrator is not available, another school staff member shall notify the credentialed school nurse assigned to the school district, county office of education, or charter school if an employee at the schoolsite administers an emergency antiseizure medication pursuant to this section.

(2) If a credentialed school nurse is not assigned to the school district, county office of education, or charter school, the school or charter school administrator or, if the administrator is not available, another school staff member shall notify the superintendent of the school district, or his or her designee, the county superintendent of schools, or his or her designee, or the charter school administrator, or his or her designee, as appropriate, if an employee at the schoolsite administers an emergency antiseizure medication pursuant to this section.

(3) A school or charter school shall retain all records relating to the administration of an emergency antiseizure medication while a pupil is under the supervision of school staff.

(o) The pupil's parent or guardian shall provide all materials necessary to administer an emergency antiseizure medication, including the information described in paragraph (6) of subdivision (k). A school or charter school shall not be responsible for providing any of the necessary materials.

(p) For purposes of this section, the following definitions apply:

(1) An "emergency antiseizure medication" means diazepam rectal gel and emergency medications approved by the federal Food and Drug Administration for patients with epilepsy for the management of seizures by persons without the medical credentials listed in paragraph (5) of subdivision (m).

(2) "Emergency medical assistance" means the administration of an emergency antiseizure medication to a pupil suffering from an epileptic seizure.

(q) This section shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

CREDIT(S)

(Added by Stats.2011, c. 560 (S.B.161), § 2.)

REPEAL

<For repeal of this section, see its terms.>

#### HISTORICAL AND STATUTORY NOTES

2012  
date

Electronic

Up-

#### 2011 Legislation

Section 1 of Stats.2011, c. 560 (S.B.161), provides:

“SECTION 1. (a) The Legislature finds and declares all of the following:

“(1) All individuals with exceptional needs have a right to participate in a free appropriate public education, and that special instruction and services for these individuals are needed in order to ensure they have the right to an appropriate educational opportunity to meet their unique needs in compliance with the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

“(2) The safety and welfare of a pupil with epilepsy is compromised without immediate access to an emergency antiseizure medication and, therefore, clarification is needed to ensure that nonmedical school staff, who have volunteered and have been trained in its correct administration, may administer an emergency antiseizure medication.

“(3) As used in this section, ‘immediate access’ means the time period that the pupil’s health care provider states that an antiseizure medication must be administered, provided that it is within the timeframe that a licensed medical person or paramedic can reasonably be expected to respond and be available.

“(b) It is the intent of the Legislature that individuals with exceptional needs and children with disabilities under the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), and Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794) shall have a right to an appropriate educational opportunity to meet their unique needs, and that children suffering from seizures due to epilepsy have the right to appropriate programs and services that are designed to meet their unique needs. In order to meet that goal, it is the intent of the Legislature that licensed health care professionals train and supervise employees of school districts, county offices of education, and charter schools to administer an emergency antiseizure medication to children with epilepsy in the public schools. The American Academy of Pediatrics and the Epilepsy Foundation of America support training of school employees to administer an emergency antiseizure medication and believe that an emergency antiseizure medication may be safely and effectively administered by trained school employees. The Legislature further finds and declares that, in the absence of a credentialed school nurse or other licensed nurse onsite at the school, it is in the best interest of the health and safety of children to allow trained school employees to administer an emergency antiseizure medication to pupils in public schools.”

#### CODE OF REGULATIONS REFERENCES

Administration of emergency anti-seizure medication by trained volunteer nonmedical school personnel,

Application, see 5 Cal. Code of Regs. § 620.

Definitions, see 5 Cal. Code of Regs. § 621.

Training content, see 5 Cal. Code of Regs. § 623.

Training requirements, see 5 Cal. Code of Regs. § 624.

Training timing, see 5 Cal. Code of Regs. § 625.

Individuals authorized to train and supervise volunteer nonmedical school personnel to administer emergency medical assistance to pupils with epilepsy suffering from seizures, see 5 Cal. Code of Regs. § 622.

Supervision of trained volunteer nonmedical school personnel in administration of emergency medical assistance, including the administration of emergency anti-seizure medication, to pupils with epilepsy suffering from seizures, see 5 Cal. Code of Regs. § 627.

When emergency medical assistance by trained volunteer nonmedical school personnel should be provided, see 5 Cal. Code of Regs. § 626.

West's Ann. Cal. Educ. Code § 49414. 7, CA EDUC § 49414. 7

Current with urgency legislation through Ch. 22 of 2012 Reg.Sess. and all propositions on the 6/5/2012 ballot.

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